

The second clause of section 476 authorizes the first-class Magistrate, to whom a case is thus sent, to "transfer the inquiry" or trial to some other competent Magistrate." I fail to see anything illegal in these proceedings.

SHEPHARD, J.—The substitution of the description "nearest" "for having power to try" is significant. I agree that the transfer was not illegal.

QUEEN-
EMPRESS
v.
NAGAPPA.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

QUEEN-EMPRESS

v.

PARANGA.*

1893.
March 29.

Penal Code—Act XLV of 1860, s. 174—Disobedience to a summons.

It is not an offence under Penal Code, s. 174, to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by H. Bradley, Acting District Magistrate of Malabar.

It appeared from the letter of reference that a conviction of an offence under Penal Code, s. 174, had proceeded on proof that the accused had disobeyed his summons to appear before a British Magistrate at a place situated in the State of Cochin. The referring officer expressed the opinion that the conviction was bad.

The parties were not represented.

ORDER.—We do not think the accused was bound to appear before the Magistrate at a place outside British territory. The Indian Penal Code applies only to criminal acts done in India under section 2, except in the special cases mentioned in section 3. If the Magistrate had ordinarily power to summon witnesses to attend at a place outside British India, the act of disobedience would then be done in foreign territory and amount to an offence over which he would have no jurisdiction. The proper construc-

* Criminal Revision Case No. 51 of 1893.

QUEEN
EMPERESS
v.
PARANGA.

tion of section 174 is that the place where a witness is summoned to attend must be in British India:

We direct that the conviction and sentence be set aside, and the fine levied be refunded.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

PAPIREDDI AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

NARASAREDDI (DEFENDANT), RESPONDENT.*

Transfer of Property Act—Act IV of 1882, s. 54—Oral sale with possession—Land worth more than Rs. 100.

The plaintiff entered into an oral contract to sell certain land to the defendant for Rs. 2,500, and he put him into possession. The defendant made default in payment of the purchase money. The plaintiff, having professed to cancel the sale on the ground of this default, now sued to recover possession of the land with mesne profits:

Held, that the sale was not complete, and the plaintiff was entitled to the relief sought by him.

APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in original suit No. 17 of 1890.

This is a suit to recover possession of certain land with mesne profits accrued thereon.

It was averred in the plaint that plaintiff No. 1 had sold the land in question to the defendant on the 15th October 1887 for Rs. 2,500 payable in eight days, and had put the defendant in possession, and that defendant had paid Rs. 150 only, and that plaintiff No. 1 had subsequently cancelled the sale by reason of the non-payment of the balance. The District Judge held that time was not of the essence of a contract, and he also expressed the opinion that, although the value of the land exceeded Rs. 100, the sale accompanied by a transfer of possession was as complete as if it had been evidenced by a registered conveyance executed before consideration passed. In this view he held that the plaintiffs were entitled to a decree for the unpaid purchase money and

* Appeal No. 119 of 1891,